



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

June 15, 2015

Hon. Mark W. Eves  
Speaker of the Maine House of Representatives  
2 State House Station  
Augusta, Maine 04333

Dear Speaker Eves:

I am writing to respond to your June 11, 2015 letter asking for advice concerning whether voting on L.D. 1019 would constitute a conflict of interest according to the standards established in 1 M.R.S.A. § 1014(1). L.D. 1019 is the biennial budget bill proposed by Governor Paul R. LePage for fiscal years 2016 and 2017, which has been modified in majority and minority reports of the Joint Standing Committee on Appropriations and Financial Affairs. It continues \$530,000 in annual funding for an educational program that is administered by Good Will-Hinckley (GWH). GWH is the assumed name of the Good Will Home Association, a non-profit corporation based in Hinckley, Maine.

One of GWH's largest programs is the Maine Academy of Natural Sciences, a charter school specializing in natural sciences. The school is organized as a separate non-profit corporation. The \$530,000 in state funding allows a portion of the student population to reside on the GWH campus, in what is referred to as the "Campus Life Program." Among other programs, GWH also administers the Glenn Stratton Learning Center, which is a day school offering educational services to students with social-emotional and behavioral challenges, and a residential "College Step Up" program for young adults to attend Kennebec County Community College.

GWH has offered you, and you have accepted, the position of President and Executive Director, which you intend to begin on July 1, 2015. You are asking whether you may vote on L.D. 1019 even though it continues the funding of the Campus Life Program at GWH. In your letter, you explain that you have not advocated for this funding and have exerted no influence over the

consideration of the funding by the Joint Standing Committee on Appropriations and Financial Affairs (AFA). The budgets in both the majority and minority reports of the AFA committee contain the same funding for this program (\$530,000 for fiscal years 2016 and 2017).

Applying the statutory standards, it is the opinion of the Ethics Commission staff that it would not constitute a conflict of interest for you to vote on L.D. 1019 in the 126<sup>th</sup> Legislature even though the budget bill provides \$530,000 in continued funding to GWH. Please bear in mind that this advisory letter is provided on behalf of the staff of the Maine Commission on Governmental Ethics and Election Practices. It is not binding on the members of the Commission, if a complaint alleging a violation were filed.

#### **Role of Commission in Providing Advice**

The Commission is authorized by law to issue advice to Legislators on ethical issues, such as whether it would be a conflict of interest to vote on or influence legislation. (1 M.R.S.A. § 1013(1)(A)) The Commission bases its advice on the definition of a "conflict of interest" set forth in 1 M.R.S.A. § 1014(1). It is a violation of legislative ethics for a Legislator to attempt to influence a bill or other legislative matter if the member has a conflict of interest in connection with that matter. (1 M.R.S.A. § 1014(1))

Advice from the Commission and its staff is based, in large part, on factual information provided by the Legislator requesting the guidance. If the Legislator provides incomplete or inaccurate information, the Commission's assessment of the question and its advice may change if the Commission receives additional, contrary information.

#### **Factual Information Provided**

*History of state funding.* In 2009, the Legislature enacted L.D. 1443 which established a residential and nonresidential program for educating at-risk students, in 20-A M.R.S.A. §§ 6951-6954. P.L. 2009, c. 296. Section 2 of the Public Law directed the Maine Department of

Education to arrange with GWH to implement the program. It charged the Commissioner of Education and the Chief Executive Officer of GWH to develop a plan for funding the program with the goal of providing services by September 1, 2010.

In the past four fiscal years, the State has provided the following funding for the program:

FY 2012	\$330,000
FY 2013	\$530,000
FY 2014	\$530,000
FY 2015	\$530,000

L.D. 1019 proposes to continue the funding at \$530,000 for both fiscal years 2016 and 2017.

*Campus Life Program at Maine Academy of Natural Sciences.* For purposes of this opinion, I interviewed James Jurdak, the Vice President of Finance and Administrative Services for GWH. The purpose of the funding is to facilitate the attendance of students at the Maine Academy of Natural Sciences by residing at the GWH campus. He said that in the current school year, the total population of the school is 77 students, and that 14-24 students have lived on campus. The total population of the school is intended to increase to 122 for the next school year beginning in the fall of 2015.

The Maine Academy of Natural Sciences and GWH both operate on a fiscal year that begins July 1. The projected budgets for the coming year (beginning July 1, 2015) are:

Maine Academy of Natural Sciences	\$1.37 million
Good Will-Hinckley	\$3.43 million
Total	\$4.80 million

The annual funding of \$530,000 is paid quarterly by the State of Maine directly to GWH. GWH spends the revenue to pay for salary, wages, and benefits, and other operational expenses such as

food, transportation and utilities. The money does not flow through the Maine Academy of Natural Sciences, although it does support the Campus Life Program of the school. In the coming fiscal year, the \$530,000 in revenue represents roughly 11% of the total combined revenue of the Maine Academy of Natural Sciences and GWH.

If the State's funding of the Campus Life Program were eliminated, it is expected that most of the students who currently reside on campus would continue to attend the school by commuting. Mr. Jurdak said that, based on his discussions with the school's Director of Admissions, he would foresee no significant impact on the number of students attending the school. There might be a small reduction, on the order of a handful of students. If the State's funding were eliminated, Mr. Jurdak would not expect a change in the salary of any manager or the laying off of any faculty or administrative staff. When asked, he noted that your compensation is established by a written contract for a term of two years, beginning July 1, 2015, and that the amount of your salary is not dependent on the amount of any revenue stream.

### **Applicable Conflict of Interest Standards**

Maine law sets the standards for when a member of the Legislature must recuse himself or herself due to a conflict of interest. The Legislative Ethics Law defines the term "conflict of interest" in 1 M.R.S.A. § 1014(1) to cover a number of situations which are set forth in paragraphs (1)(A) through (1)(F). If a member has a conflict of interest in connection with a bill or other legislative matter, it is a violation of legislative ethics for the Legislator to attempt to influence that bill or matter. (1 M.R.S.A. § 1014(1))

#### *Recusal on bills affecting a Legislator's business, client, or employer*

Paragraph 1(A) relates to situations in which the Legislator has a "close economic association" with an entity that is affected by proposed legislation. This could cover the Legislator's employer as well as other organizations with which the Legislator is affiliated (e.g., if a

Legislator serves as a member of a non-profit organization's board of directors, or passively owns more than 10% of a family business).

A. When a Legislator or a member of the Legislator's immediate family has or acquires a direct substantial personal financial interest, distinct from that of the general public, in an enterprise that would be financially benefited by proposed legislation, or derives a direct substantial personal financial benefit from close economic association with a person known by the Legislator to have a direct financial interest in an enterprise affected by proposed legislation;

The Commission has taken the view that voting on legislation results in a conflict of interest under § 1014(1)(A) only if the Legislator or immediate family member *personally benefits* from the legislation. In a March 12, 2010 advisory opinion to Rep. Jon Hinck, the Commission endorsed the reasoning of a June 10, 1983 advisory opinion of Maine Attorney General James E. Tierney. In the latter opinion, a Legislator had inquired whether she was prevented from voting on a bill because her husband had rendered legal advice to a client concerning the bill. After reviewing the legislative history of 1 M.R.S.A. § 1014(1)(A), the Attorney General observed that

[I]t is clear that the Legislature never intended that a member of either House must be disqualified from voting on a proposal merely because she or a member of her immediate family is compensated for work performed for an employer or a client who might be affected by the legislation. The "direct substantial personal financial benefit" referred to in 1 M.R.S.A. §1014(1)(A) must involve a financial reward separate and distinct from the remuneration one receives as an employee or agent for services rendered.

The Attorney General concluded that

In short, §1014(1)(A) does not prevent a Legislator from voting on a measure unless she or a member of her immediate family will receive a financial benefit

either directly or through a third party, by virtue of the proposed legislation. To suggest otherwise, leads to the conclusion, clearly not contemplated by the Legislature, that any Legislator employed in the private sector must abstain from voting on legislative matters which affect the profession or business in which the Legislator is employed.

For purposes of this advice letter, the Commission staff is relying on the reasoning of Attorney General Tierney in his June 10, 1983 advisory opinion and the Ethics Commission's endorsement of that reasoning in its March 12, 2010 advisory opinion to Rep. Jon Hinck. Both of those opinions interpret § 1014(1)(A) to mean that a Legislator does not have a conflict of interest merely because his or her employer is financially benefited by legislation. Under this reasoning, a conflict results only if the Legislator *personally* receives a benefit from the legislation.

*Recusal on bills relating to a Legislator's employment, profession or trade*

Two of the paragraphs apply to legislation that relates to a Legislator's employment:

E. When a Legislator or a member of the Legislator's immediate family accepts or engages in employment that could impair the Legislator's judgment, or when the Legislator knows that there is a substantial possibility that an opportunity for employment is being afforded the Legislator or a member of the Legislator's immediate family with intent to influence the performance of the Legislator's official duties, or when the Legislator or a member of his immediate family stands to derive a personal private gain or loss from employment, because of legislative action, distinct from the gain or losses of other employees or the general community; and

F. When a Legislator or a member of the Legislator's immediate family has an interest in legislation relating to a profession, trade, business or employment in

which the Legislator or a member of the Legislator's immediate family is engaged, and the benefit derived by the Legislator or a member of the Legislator's immediate family is unique and distinct from that of the general public or persons engaged in similar professions, trades, businesses or employment.

These two paragraphs contain a number of tests for determining whether a Legislator has a conflict of interest. In summary, a Legislator has a conflict of interest in influencing legislation related to his employment, profession or trade, if (1) the legislation would result in a financial benefit to the Legislator, and (2) that benefit is unique or distinct from other individuals in the same trade or profession or employment as the Legislator. Additionally, a conflict may exist under § 1014(1)(E) when a "Legislator knows that there is a substantial possibility that an opportunity for employment is being afforded the Legislator ... with intent to influence the performance of the Legislator's official duties."

#### **Advice from the Commission Staff**

Based on the standards set forth in 1 M.R.S.A. § 1014(1) and the facts you have provided, the Commission staff advises that it would not be a conflict of interest for you to vote on the majority or minority version of L.D. 1019 even though both include the proposed funding of \$530,000 for the Campus Life Program operated by GWH. In your June 11, 2015 letter, you stated that "My family and I will receive no direct personal benefit from the funding." The information that I received from the Vice President for finance at GWH confirms this. He advised that your compensation is set by a two-year written contract and has no relationship to any revenue received by GWH. If the Maine Legislature were to cut back or eliminate the funding, the Maine Academy of Life Sciences would continue to operate without the Campus Life Program in the short term. He said that the number of students would not change significantly and he would expect no change in the compensation of any manager at GWH. The other programs of GWH, such as the Glenn Stratton Learning Center and the College Step-Up program, would continue as well.

Hon. Mark W. Eves

Page 8

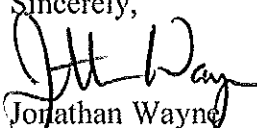
June 15, 2015

Given the lack of evidence that you would receive any personal benefit from the enactment of L.D. 1019, it is not a conflict of interest for you to vote on the budget bill under 1 M.R.S.A. § 1014(1)(A) (as interpreted by the Commission and the Maine Attorney General), the final clause of § 1014(E), or § 1014(F). In addition, given the timing of the Governor's inclusion of the proposed funding in L.D. 1019 and your subsequent application and acceptance of the position, there does not seem to be any basis to infer that GWH offered you the position with the intent to influence you with respect to the budget bill or any other legislative action.

We note that several factual circumstances would diminish any public perception that you have a conflict of interest in voting on L.D. 1019. The legislative decision to fund a program for at-risk youth and to direct its administration by GWH was made in 2009. At that time, you were in your first year in the Maine Legislature and, presumably, no future employment by GWH could be anticipated. The proposed funding for fiscal years 2016 and 2017 is the same as in the three prior fiscal years. There is no evidence presented that you have used your position to advocate for the Governor's (or the AFA Committee's) inclusion of the continued funding in the budget. Finally, Legislators have an important duty to their constituents to vote on comprehensive budget legislation that will determine the funding of Maine state government, including all state programs and services, for the next two years. The funding for GWH is a very small component of the overall state budget.

With regard to other legislation that could arise in the remainder of your current term of service, we recommend considering whether you may need to recuse yourself from voting on particular matters that would affect GWH, in order to avoid the appearance of any conflict of interest.

Thank you for your consideration of this advisory letter from the staff of the Maine Ethics Commission.

Sincerely,  
  
Jonathan Wayne  
Executive Director